## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DIANNA M. MAYNARD,	)
Plaintiff,	)
v.	) Case No. 3:06cv0988
MICHAEL J. ASTRUE,1	<i>)</i> ) Judge Thomas A. Wiseman, Jr.
Commissioner of Social Security,	) Magistrate Judge John S. Bryant
Defendant.	)

## **ORDER OF FINAL JUDGMENT**

Plaintiff Dianna Maynard filed this matter seeking judicial review of the final decision of the Commissioner of Social Security ("Defendant" or "Commissioner") that Plaintiff was not disabled and denying Plaintiff's claims for Disability Insurance Benefits ("DIB"), as provided under Title II of the Social Security Act ("the Act"). After the case was referred to United States Magistrate Judge John S. Bryant pursuant to 28 U.S.C. § 636(b)(1)(B), Plaintiff filed her Motion for Judgment based upon the Administrative Record (Doc. No. 16). Defendant filed a response opposing Plaintiff's motion (Doc. No. 19) and Plaintiff filed a reply brief (Doc. No. 20). Magistrate Judge Bryant thereafter filed a Report and Recommendation ("Report") (Doc. No. 21) recommending that the Plaintiff's motion be denied and that the decision of the Commissioner be affirmed. Plaintiff has filed timely objections to the Magistrate's Report (Doc. No. 22), to which the Commissioner has responded (Doc. No. 23).

The Court has reviewed *de novo* the entire record and the pleadings, with particular attention to those portions of the record that are relevant to Plaintiff's objections. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). As set forth in greater detail in the accompanying Memorandum Opinion, the Court finds that the Commissioner's decision is not supported by substantial evidence in the record and that the ALJ erred as a matter of law in rejecting the opinion of Plaintiff's treating source. The Court further finds that that the ALJ's decision was clearly erroneous; proof of disability is strong; and evidence to support an alternative conclusion is completely lacking. More specifically, the evidence in the record clearly

<sup>&</sup>lt;sup>1</sup> Michael J. Astrue is automatically substituted for his predecessor Jo Anne Barnhart as Commissioner of the Social Security Administration. Fed. R. Civ. P. 25(d)(1).

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demonstrates that Plaintiff has been disabled at least since the date of her surgery on September 17, 2003, and she is entitled to a period of disability and Disability Insurance Benefits beginning on that date and continuing through the last insured date of December 31, 2004.

Accordingly, the Court declines to adopt the Magistrate's Report & Recommendation. Plaintiff's Motion for Judgment (Doc. No. 16) is **GRANTED** and the Commissioner's decision **REVERSED**. This matter is **REMANDED** to the Commissioner for the calculation and payment of Disability Insurance Benefits consistent with the Social Security Act and this Order. Judgment is hereby entered in favor of the Plaintiff.

It is so **ORDERED**.

This is a final judgment for purposes of Fed. R. Civ. P. 58.

Thomas A. Wiseman, Jr. Senior U.S. District Judge